cover losses from the respondent should only be limited to $45,442.80 as this was nowhere near the actual losses that it suffered. In our view the so called sale price of $45,442.80 fixed by the sale agreement is not the agreed loss to which MIMB's right to recover is limited so that it is precluded from recovering a higher sum. Further if we read the sale agreement, the lease agreement and the guarantee and indemnity undertaking together as one instrument we would find nothing in them which would justify us to conclude that MIMB could only recover $45,442.80. In our view the submission therefore fails.

Consequently we agree with the learned judge that the respondent is entitled to the recoupment of the first amount of $527,039.37 representing the losses damages costs and expenses suffered or incurred by MIMB, which the respondent in turn had paid MIMB.

As regards the second amount of $165,660.73 representing the respondent's own losses damages costs and expenses, this amount consisted of (a) interest paid in respect of a loan taken in order to pay the first amount to MIMB (b) repossession expenses (c) fire insurance premium (d) store rentals (e) transportation of the repossessed equipment (f) legal fees, and (g) advertisement for sale of the equipment. These are all losses which flowed from the default of the appellant in paying the rentals, which eventually led to the termination of the lease agreement. We thus agree with the learned judge that the respondent was entitled to recover these losses from the appellant under section 74 of the Contracts Act, 1950.

The appeal is therefore dismissed with costs. The deposit is to be paid to the respondent on account of taxed costs.

Appeal dismissed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones; Skrine & Co.*

WEARNE BROTHERS MALAYSIA SDN. BHD. v. GURDAVE KAUR & ANOR; BAHARUDDIN, BERNATT, TAN & KER (as Garnishees)

[O.C.J. (Ajaib Singh J.) August 23, 1979]
[Seremban — Civil Suit No. 276 of 1976]

Practice and Procedure — Garnishee proceedings — Undated notice of garnishment — Effect of — R.S.C. 1957, O. 43 r. 5 & O. 45.

The judgment creditors had sued the judgment debtors as the administratrix and administrator of the estate of Gurcharan Singh (deceased) for a sum of $8,028.18 under a hire-purchase agreement made between the judgment creditors and the deceased in respect of a motor vehicle. Subsequently a consent judgment for this sum was entered against the judgment debtors on May 9, 1977. Earlier in 1974 the judgment debtors had retained the garnishees, a firm of advocates and solicitors to obtain Letters of Administration and these were granted to them on December 13, 1976. Since then a sum of $55,344.85 due to the deceased's estate from Malaysian Co-operative Insurance Society Ltd. was paid to the garnishees.

On January 2, 1979 an undated garnishment notice was served on the garnishees. This was followed by a garnishee summons dated April 13, 1979 and served on May 3, 1979 on the garnishees.

The garnishees sought to set aside the said Notice and summons as they claimed that there were no debts owing or accruing from them to the judgment debtors, that they were not beneficially entitled to any attachable property which may come under the control of the garnishees and that the garnishees had no property of the judgment debtors in their custody or control.

Held, dismissing the garnishees' application: (1) the court has jurisdiction to set aside a garnishment notice or a garnishee summons but it should do so only on being satisfied by cogent evidence that such notice or summons was not issued *bona fide* and that the issue thereof was an abuse of the process of the court;

(2) the garnishees in this case failed to show why the procedure as set out in the rules relating to garnishee proceedings should not be adhered to and they also failed to show that they were not answerable to the garnishment notice or the garnishee summons. Although the garnishees had asserted positively that there was no debt owing or accruing from them to the judgment debtors they were not in a position to say categorically that no other attachable property belonging to the judgment debtors would come into their hands;

(3) unlike some other prescribed forms including the one for a garnishee summons there is no requirement that a garnishment notice should be dated. There is therefore no merit in the contention that the garnishment notice should be set aside because it was undated;

(4) the notice and summons were issued *bona fide* and were not an abuse of the process of the court.

CIVIL SUIT.

J.G. Bernatt for the garnishees and judgment debtors.

Leow Shin Fong for the judgment creditors.

Cur. Adv. Vult.

Ajaib Singh J.: This was an application by the garnishees to set aside a garnishment notice and a garnishee summons issued and served on them at the instance of the judgment creditors. The grounds on which they sought to set aside the aforesaid notice and summons were that the garnishees had no debts owing or accruing from them to the judgment debtors, that the judgment debtors were not beneficially entitled to any attachable property which may come under the control of the garnishees and that the garnishees had no property of the judgment debtors in their custody or control.

The facts leading to the present application were as follows. The judgment creditors had sued the judgment debtors as the administratrix and administrator of the estate of Gurcharan Singh (deceased) for a sum of $8,028.18 under a hire-purchase agreement made between the judgment creditors and the deceased in respect of a motor vehicle. Subsequently a consent judgment for this sum was entered against the judgment debtors on May 9, 1977. Earlier in 1974 the judgment debtors had retained the garnishees who are a firm of advocates and solicitors to obtain Letters of Administration and these were granted to them on December 13, 1976. A sum of $55,344.85 due to the deceased's estate from Malaysian Co-operative Insurance Society Ltd. was thereafter paid to the garnishees who in turn had the sum deposited in Bank Buruh on February 25, 1977 in an account opened for the estate. An undated garnishment notice was served on the garnishees on January 2, 1979

followed by a garnishee summons dated April 13, 1979 which was served on the garnishees on May 3, 1979.

In their affidavit in support the garnishees contended that the garnishment notice should be set aside as it was undated and that both the notice and the garnishee summons should be set aside on the ground that the garnishees had no money or attachable property in their possession, custody or control. It was said that the only attachable property which may come into their hands would be the assets of the deceased and these would be subject to distribution to the beneficiaries of the estate of the deceased.

The court has jurisdiction to set aside a garnishment notice or a garnishee summons but it should in my view do so only on being satisfied by cogent evidence that such notice or summons was not issued *bona fide* and that the issue thereof was an abuse of the process of the court. Garnishee proceedings are after all regulated by Order 43 rule 5 and Order 45 of the Rules of the Supreme Court so that strong and valid reasons must be shown why the relevant procedure should not be followed as a matter of course.

In the present case the garnishees failed to show why the procedure as set out in the rules relating to garnishee proceedings should not be adhered to and they also failed to show that they were not answerable to the garnishment notice or the garnishee summons. In their affidavit the garnishees stated that there was no debt owing or accruing from them to the judgment debtors. They also held the belief that no attachable property would come into their hands but added that the only attachable property which might come into their hands would be the assets of the deceased on distribution. Thus although the garnishees had asserted positively that there was no debt owing or accruing from them to the judgment debtors they were not in a position to say categorically that no other attachable property belonging to the judgment debtors would come into their hands. On the contrary they were conceding that on a distribution of the assets of the deceased they would have in their custody or control attachable property to which the judgment debtors would be beneficially entitled. The judgment debtors who are the administratrix and administrator of the estate of the deceased are described in the Grant of Letters of Administration as the widow and brother-in-law respectively of the deceased. Therefore the widow at any rate is a beneficiary and she would be entitled to a share in the assets of the deceased on distribution. In these circumstances the judgment creditors were perfectly right in instituting garnishee proceedings against the garnishees for the purpose of recovering the judgment debt owing to them from the judgment debtors.

I also found no merit in the contention advanced by the garnishees that the garnishment notice should be set aside because it was undated. A garnishment notice is prescribed in Form 15 of the Rules of the Supreme Court and it may be noted that unlike some other prescribed forms including the one for a garnishee summons in Form 17 there is no requirement that a garnishment notice should be dated.

In all the circumstances of the case I came to the conclusion that there were insufficient grounds on which to set aside the garnishment notice and the garnishee summons. The notice and summons were issued *bona fide* and were not an abuse of the process of the court. I was of the view that the rules of procedure relating to garnishee proceedings ought to be followed in this case and I accordingly dismissed the application by the garnishees with costs.

Application dismissed.

Solicitors: *Baharuddin, Bernatt, Tan & Ker; Ariffin & Leow.*

PUBLIC PROSECUTOR v. NGOI MING SEAN

[O.C.J. (Ajaib Singh J.) September 26, 1980]
[Seremban — Criminal Trial No. 1 of 1980]

Criminal Law and Procedure — Charge of culpable homicide not amounting to murder — Self-defence — Penal Code, s. 304.

The accused, a police detective, was charged with culpable homicide not amounting to murder. It appeared there was a quarrel between the accused and the deceased and in the struggle for the revolver the accused caused the deceased's death.

Held: on the facts the accused was placed in a situation of such great peril that he had no time to think or do anything else but to fire the shot from his revolver. The act which caused the death of the deceased was done in the exercise of the right of private defence and was not in excess of that right.

Cases referred to:-

(1) *Musa bin Yusof* v. *Public Prosecutor* [1953] M.L.J. 70.
(2) *Alingal Kunhinayan* v. *Emperor* I.L.R. 28 Mad. 454.
(3) *Govindan Neelambaran* v. *State of Kerala* A.I.R. 1960 Ker. 258.
(4) *Jai Dev.* v. *State of Punjab* A.I.R. 1963 S.C. 612.
(5) *Survade* v. *State of Gujarat* [1972] 2 Cr. L.J. 1574.

CRIMINAL TRIAL.

Balia Yusof bin Wahi (Deputy Public Prosecutor) for the Public Prosecutor.

Manjeet Singh Dhillon for the accused.

Cur. Adv. Vult.

Ajaib Singh J.: The accused who is a police detective is charged with culpable homicide not amounting to murder by causing the death of Yong Foo Min an offence punishable under section 304 of the Penal Code.

Up to the point when the accused fired a shot from his revolver which resulted in the death of the deceased the facts are not very much in dispute. The accused had gone to the 747 Bar with four others at about 11.00 p.m. Inside the bar he was confronted by the deceased who asked him a few personal questions. A short while later the accused went to the toilet at the rear to ease himself and he waited for his turn while the deceased was already there and about to urinate. Here a quarrel started between them. The deceased said he was unable to pass water while the accused was standing next to him and the accused replied that he could take his time. The deceased became angry and aggressive. He started scolding the accused and wanted to have the matter